



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP/168136

PRELIMINARY RECITALS

Pursuant to a petition filed August 19, 2015, under Wis. Admin. Code § HA 3.03(4) (*This subprogram no longer exists.), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on September 10, 2015, at Milwaukee, Wisconsin. The record was held open post-hearing to allow the parties to submit additional information. Additional information was submitted by the agency on September 11, 2015. Additional information was submitted by the Petitioner on September 16, 2015 and September 22, 2015. The record was closed on September 22, 2015.

The issue for determination is whether the agency properly discontinued the Petitioner's FS benefits effective August 1, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Belinda Brown
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On April 24, 2015, the Petitioner submitted an application for FS benefits. On May 12, 2015, the Petitioner was referred to the FSET program.
3. Petitioner's household size is one.
4. On May 12, 2015, the agency issued a notice to the Petitioner that she was referred to the FSET program with a begin month of May, 2015. Petitioner was informed via phone by the agency that she was scheduled for an FSET appointment on May 21, 2015 at 9:00 a.m. Petitioner did not appear for the appointment.
5. On May 21, 2015, the Petitioner worked from 12:00 p.m. – 4:20 p.m.
6. On May 26, 2015, the agency issued a notice to the Petitioner that her FSET appointment was rescheduled to Tuesday, June 2, 2015 at 9:00 a.m. The Petitioner did not appear for the appointment.
7. On June 2, 2015, the Petitioner worked from 12:00 p.m. – 4:30 p.m.
8. On June 4, 2015, the agency issued a notice to the Petitioner that her FSET appointment was rescheduled to Thursday, June 11, 2015 at 9:00 a.m. Petitioner did not appear for the appointment.
9. On June 11, 2015, the Petitioner worked from 12:00 p.m. – 4:30 p.m.
10. On June 15, 2015, the agency issued a notice to the Petitioner that her FSET appointment was rescheduled to Tuesday, June 23, 2015 at 9:00 a.m. Petitioner did not appear for the appointment.
11. On June 23, 2015, the Petitioner worked from 12:00 p.m. – 4:30 p.m.
12. On July 17, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would end August 1, 2015 due to using three months of time-limited benefits.
13. On July 20, 2015, the Petitioner contacted the agency to report that she works on Tuesdays and Thursdays and that she is scheduled for surgery at the end of July.
14. On July 28, 2015, Petitioner appeared for an FSET orientation appointment.
15. On July 31, 2015, Petitioner had a hysterectomy.
16. In May, June and July, 2015, the Petitioner worked approximately 9 hours/week.
17. On August 19, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Pursuant to a provision of Wisconsin's 2007-2009 biennial budget, Wisconsin has operated a voluntary FoodShare Employment and Training (FSET) program since 2008. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits the receipt of FS benefits to three full months in a 36-month time period for Able-Bodied Adults without Dependents (ABAWDs) who do not meet the work requirement or meet an exemption from the work requirement.

6.3.2 Non-Exempt ABAWD Participation Requirements

Non-exempt ABAWDs who do not meet the ABAWD work requirement will only be allowed to receive up to three full months of FoodShare (FS) benefits in a 36-month time period. ABAWDs subject to time-limited benefits (TLBs) may choose to meet the work requirement by participating in FSET.

As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat., §49.79(10), which mandated FS eligibility and work requirements for ABAWDs to be implemented in Wisconsin beginning in 2014, consistent with federal regulations 7 CFR §273.7 and 7 CFR §273.24. The program

began in Milwaukee County effective April 1, 2015, and FS recipients were required to meet the requirements beginning with the next FS review completed after April 1, 2015. FoodShare Wisconsin Handbook, §3.17.1.2.

Under Wis. Stat., §49.79(10), an ABAWD is required to fulfill a work requirement. If she does not fulfill the work requirement, she is limited to receiving no more than three months' FS during a three year period. The requirements are stated in the FSET Handbook, as follows:

6.3.2.1 Definition of Working for ABAWDs

For ABAWDs, working is defined as one of the following:

- Work in exchange for money;
- Work in exchange for goods or services (in-kind);
- Unpaid work (e.g. volunteer work, community service);
- Self-employment; or
- Any combination of the above.

6.3.2.2 ABAWD Work Requirement

An ABAWD is considered to be meeting the ABAWD work requirement if one of the following applies:

- Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
- Participating in and complying with the requirements of an allowable work program at least 80 hours per month; or
- Both working and participating in an allowable work program for a combined total of at least 80 hours per month.
- Participating in and complying with the requirements of a workfare program.

FSET Handbook, §§ 6.3.2.1 & 6.3.2.2; and see FoodShare Wisconsin Handbook at §3.17.1.

To meet the work requirement the ABAWD must work a minimum of 80 hours per month, participate in a work program 80 hours per month, or a combination of both for 80 hours per month. FoodShare Wisconsin Handbook, §3.17.1.7. The person is limited to three months of FS eligibility in which he is not meeting the 80-hour requirement and is not exempt. Ibid., §3.17.1.9. FS ends after three months of failing to meet the work requirement, but eligibility can begin again if the person becomes exempt or meets the work requirement for a 30-day period (the person could reapply for FS after meeting the requirement for 30 days). Ibid., §3.17.1.11. Among other reasons, a person can be exempt from the program if he is unfit for employment, that is, he is unable to work as evidenced by a statement by a health care professional or social worker. FoodShare Wisconsin Handbook, §3.17.1.5.

In fact, the FSET Handbook, at section 3.5.2, specifically states in this failure to enroll situation, as follows:

In order for a non-exempt ABAWD to meet the work requirement through FSET participation and maintain ongoing FS benefits after the TLB month, s/he must be enrolled and fully participating in FSET by the 10th day of the third TLB month. The FSET worker should document in PIN comments information relating to each contact that is attempted.

At the hearing, the Petitioner testified that she contacted the agency numerous times to report that she works on Tuesdays and Thursdays and that she required an appointment on Monday, Wednesday or

Friday. She stated that she continued to be re-scheduled for appointments on Tuesdays and Thursdays. The Petitioner further testified that she believes she met a medical exemption. Specifically, she submitted documentation demonstrating that she had an ultrasound done in May, 2015 and that she was seen for medical consultations in May and June, 2015. On July 31, 2015, she had a hysterectomy.

The Petitioner submitted work records demonstrating that she did, in fact, work on the days that she was scheduled for her FSET appointments. Specifically, she worked from 12:00 p.m. – 4:30 p.m. on May 21, June 2, June 11 and June 23, 2015.

The agency is required to document all contacts with an FSET participant. In this case, the agency submitted the case comments. The only time there is evidence that the Petitioner contacted the agency regarding her work on Tuesdays and Thursdays was on July 20, 2015. The Petitioner was unable to submit any specific information regarding dates or names of persons she contacted at the agency. While the Petitioner did submit documentation demonstrating that she worked on the dates of her FSET appointments, she did not explain why she would be unable to make the FSET appointment at 9:00 a.m. when her work did not start until 12:00 p.m.

In addition, the medical documentation does not support an exemption from the FSET requirements. Petitioner had medical appointments sometime in May and June, 2015 but there is insufficient evidence to demonstrate that these dates conflicted with her FSET appointments or that her medical condition was such that she would be exempt from FSET requirements. I note that the Petitioner continued to work her job during this time. Her surgery at the end of July, 2015 would not be an exemption as it occurred on the last day of her third month of time-limited benefits.

The Petitioner also testified that her attendance at the July 28, 2015 FSET orientation should be sufficient to be compliant with the FSET rules. The FSET Handbook at section 3.5.2 specifically states that to meet the work requirement and maintain benefits beyond the third month of time-limited benefits the Petitioner had to have been fully enrolled and participating by July 10, 2015. The Petitioner did not meet the 80 hour/month work requirement, she had not attended the FSET orientation and she did not meet a medical exemption by July 10, 2015.

Based on the evidence, I conclude the agency properly discontinued the Petitioner's FS benefits effective August 1, 2015 for failure to comply with FSET requirements and due to the expiration of the Petitioner's third month of time-limited benefits.

CONCLUSIONS OF LAW

The agency properly discontinued the Petitioner's FS benefits effective August 1, 2013.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

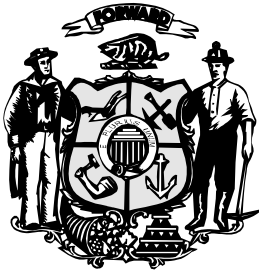
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of October, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 15, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability